IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 8 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF WEALTH TAX

Versus

SHAKUNTALABEN A PATEL

Appearance:

1. WEALTH TAX REFERENCE No. 8 of 1993

MR BB NAIK with MR MANISH R BHATT for Petitioner

SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 08/11/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of revenue, the following questions has been referred for our opinion under Section 27(1) of the Wealth-tax Act, 1957 :-

"Whether in law and on facts, the Appellate Tribunal is right in holding that the assessee would be entitled to the benefit of exemption u/s.5(1)(xxxii) of the W.T. Act, 1957 to the extent of the value of her interest in the assets (not being any land or building or any asset referred to in other clause of sub-section 5(1)) forming part of Industrial undertaking belonging to M/s A. Ajaykumar & Co. ?"

2. We have heard Mr BB Naik, learned counsel for the revenue. Though served, none appears for the respondent-assessee.

3. Our attention has been invited to the decision of this Court in CWT vs. Mohinibai Kanaiyalal, (1999) 240 ITR 636. In that case, the assessee was a partner in a firm. The business activities of the firm were to purchase grey cloth, get its conversion to cloth through outside agencies and sale of the finished products. The assessee in her wealth-tax assessment proceedings claimed her share in the firm as exempt under section 5(1)(xxxii) on the ground that the firm was an industrial undertaking. Her claim was rejected by the Wealth-tax Officer but allowed by the Tribunal. On a reference, this Court held that the assessee could not be said to have interest in a firm which was engaged in the business of manufacture of goods or processing of goods and, therefore, she was not entitled to claim the benefit of exemption under Section 5(1)(xxxii) in respect of her share in the value of its assets. In the instant case also, the finding of the Wealth-tax Officer, which is not disturbed by the Tribunal is that the firm was getting the processing of cloth done by outside agencies and that the firm itself was not engaged in any industrial activity.

4. Following the aforesaid decision, we answer the question in the negative i.e. in favour of the revenue and against the assessee.

5. The reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-